

House File 928 - Introduced

HOUSE FILE _____
BY COMMITTEE ON APPROPRIATIONS

(SUCCESSOR TO HF 792)
(SUCCESSOR TO HSB 199)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to regulation of underground storage tanks by the
2 department of natural resources, making appropriations, and
3 providing contingent effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1404HZ 82
6 tm/es/88

PAG LIN

1 1 Section 1. Section 455B.474, subsection 1, paragraph b,
1 2 Code 2007, is amended to read as follows:
1 3 b. Maintaining records of any monitoring or leak detection
1 4 system, inventory control system, ~~or~~ tank testing or
1 5 comparable system, and periodic underground storage tank
1 6 facility compliance inspections conducted by inspectors
1 7 certified by the department.

1 8 Sec. 2. Section 455B.474, subsection 1, paragraph h,
1 9 subparagraph (3), Code 2007, is amended to read as follows:
1 10 (3) A certificate ~~may~~ shall be recorded with the county
1 11 recorder. The owner or operator of a site who has been issued
1 12 a certificate under this paragraph "h" or a subsequent
1 13 purchaser of the site shall not be required to perform further
1 14 corrective action solely because action standards are changed
1 15 at a later date. A certificate shall not prevent the
1 16 department from ordering corrective action of a new release.

1 17 Sec. 3. Section 455B.474, subsection 1, Code 2007, is
1 18 amended by adding the following new paragraph:

1 19 NEW PARAGRAPH. i. Establishing a certified compliance
1 20 inspector program administered by the department for
1 21 underground storage tank facility compliance inspections.

1 22 (1) The certified compliance inspector program shall
1 23 provide for, but not be limited to, all of the following:

1 24 (a) Mandatory periodic underground storage tank facility
1 25 compliance inspections by owners and operators using
1 26 inspectors certified by the department.

1 27 (b) Compliance inspector qualifications, certification
1 28 procedures, certification and renewal fees sufficient to cover
1 29 administrative costs, continuing education requirements,
1 30 inspector discipline standards including certification
1 31 suspension and revocation for good cause, compliance
1 32 inspection standards, professional liability bonding or
1 33 insurance requirements, and any other requirements as the
1 34 commission may deem appropriate. Certification and renewal
1 35 fees received by the department are appropriated to the

2 1 department for purposes of the administration of the certified
2 2 compliance inspector program.

2 3 (2) The department shall continue to conduct independent
2 4 inspections as provided in section 455B.475 as deemed
2 5 appropriate to assure effective compliance and enforcement and
2 6 for the purpose of auditing the accuracy and completeness of
2 7 inspections conducted by certified compliance inspectors.

2 8 (3) Acts or omissions by a certified compliance inspector,
2 9 the state, or the department regarding certification, renewal,
2 10 oversight of the certification process, continuing education,
2 11 discipline, inspection standards, or any other actions, rules,
2 12 or regulations arising out of the certification, inspections,
2 13 or duties imposed by this section shall not be cause for a
2 14 claim against the state or the department within the meaning
2 15 of chapter 669 or any other provision of the Iowa Code.

2 16 Sec. 4. Section 455B.474, subsection 1, paragraph d,

2 17 subparagraph (2), subparagraph subdivision (e), Code 2007, is
2 18 amended to read as follows:

2 19 (e) A site cleanup report which classifies a site as
2 20 either high risk, low risk, or no action required shall be
2 21 submitted by a groundwater professional to the department with
2 22 a certification that the report complies with the provisions
2 23 of this chapter and rules adopted by the department. The
2 24 report shall be determinative of the appropriate
2 25 classification of the site. However, if the report is found
2 26 to be inaccurate or incomplete, and if based upon information
2 27 in the report the risk classification of the site cannot be
2 28 reasonably determined by the department based upon industry
2 29 standards, the department shall work with the groundwater
2 30 professional to obtain the additional information necessary to
2 31 appropriately classify the site. A groundwater professional
2 32 who knowingly or intentionally makes a false statement or
2 33 misrepresentation which results in a mistaken classification
2 34 of a site shall be guilty of a serious misdemeanor and shall
2 35 have the groundwater professional's certification revoked

3 1 under this section ~~455G-18~~.

3 2 Sec. 5. Section 455B.474, subsection 1, paragraph f,
3 3 subparagraph (5), Code 2007, is amended to read as follows:

3 4 (5) A corrective action design report submitted by a
3 5 groundwater professional shall be accepted by the department
3 6 and shall be primarily relied upon by the department to
3 7 determine the corrective action response requirements of the
3 8 site. However, if the corrective action design report is
3 9 found to be inaccurate or incomplete, and if based upon
3 10 information in the report the appropriate corrective action
3 11 response cannot be reasonably determined by the department
3 12 based upon industry standards, the department shall work with
3 13 the groundwater professional to obtain the additional
3 14 information necessary to appropriately determine the
3 15 corrective action response requirements. A groundwater
3 16 professional who knowingly or intentionally makes a false
3 17 statement or misrepresentation which results in an improper or
3 18 incorrect corrective action response shall be guilty of a
3 19 serious misdemeanor and shall have the groundwater
3 20 professional's certification revoked under this section
3 21 ~~455G-18~~.

3 22 Sec. 6. Section 455B.474, Code 2007, is amended by adding
3 23 the following new subsections:

3 24 NEW SUBSECTION. 8. Requirements as may be necessary to
3 25 maintain state program approval and which are consistent with
3 26 applicable provisions of the federal Energy Policy Act of
3 27 2005, Pub. L. No. 109=58, Title XV, Subtitle B, Underground
3 28 Storage Tank Compliance, as codified in 42 U.S.C. } 6991 et
3 29 seq.

3 30 a. The commission shall adopt rules establishing a
3 31 training program applicable to owners and operators of
3 32 underground storage tanks. The rules may include provisions
3 33 for department certification of operators, self-certification
3 34 by owners and operators, education and training requirements,
3 35 owner requirements to assure operator qualifications, and
4 1 assessment of education, training, and certification fees.
4 2 The rules shall be consistent with and sufficient to comply
4 3 with the operator training requirements as provided in 42
4 4 U.S.C. 6991i, guidance adopted pursuant to that provision by
4 5 the administrator of the United States environmental
4 6 protection agency, and state program approval requirements
4 7 under 42 U.S.C. 6991i(b).

4 8 b. The commission shall adopt rules related to the
4 9 prohibition on the delivery of regulated substances consistent
4 10 with and sufficient to comply with the provisions of 42 U.S.C.
4 11 6991k, guidance adopted by the administrator of the United
4 12 States Environmental Protection Agency pursuant to that
4 13 provision, and state program approval requirements under 42
4 14 U.S.C. 6991k(a)(3).

4 15 c. The commission shall adopt rules applicable to
4 16 secondary containment requirements consistent with and
4 17 sufficient to comply with the provisions of Pub. L. 109=58,
4 18 Title XV, section 1530(a), as codified at 42 U.S.C.
4 19 6991b(i)(1), and guidance adopted by the administrator of the
4 20 United States environmental protection agency pursuant to that
4 21 provision. Each new underground storage tank or piping
4 22 connected to any such new tank installed after the effective
4 23 date of this section of this Act, or any existing underground
4 24 storage tank or existing piping connected to such existing
4 25 underground storage tank that is replaced after August 1,
4 26 2007, shall be secondarily contained if the installation is
4 27 within one thousand feet of any existing community water

4 28 system or any existing potable drinking water well as provided
4 29 in Pub. L. 109=58, Title XV, section 1530(a), as codified at
4 30 42 U.S.C. } 6991b(i)(1) and in guidance adopted by the United
4 31 States environmental protection agency pursuant to that
4 32 provision. Rules adopted under this paragraph shall not amend
4 33 or modify the secondary containment requirements in subsection
4 34 1, paragraph "f", subparagraph (9).

4 35 NEW SUBSECTION. 9. a. Groundwater professionals shall be
5 1 certified. The commission shall adopt rules pursuant to
5 2 chapter 17A for such certifications, and the rules shall
5 3 include provisions for certification suspension or revocation
5 4 for good cause.

5 5 b. A groundwater professional is a person who provides
5 6 subsurface soil contamination and groundwater consulting
5 7 services or who contracts to perform remediation or corrective
5 8 action services and is one or more of the following:

5 9 (1) A person certified by the American institute of
5 10 hydrology, the national water well association, the American
5 11 board of industrial hygiene, or the association of groundwater
5 12 scientists and engineers.

5 13 (2) A professional engineer licensed in Iowa.

5 14 (3) A professional geologist certified by a national
5 15 organization.

5 16 (4) Any person who has five years of direct and related
5 17 experience and training as a groundwater professional or in
5 18 the field of earth sciences.

5 19 (5) Any other person with a license, certification, or
5 20 registration to practice hydrogeology or groundwater hydrology
5 21 issued by any state in the United States or by any national
5 22 organization, provided that the license, certification, or
5 23 registration process requires, at a minimum, all of the
5 24 following:

5 25 (a) Possession of a bachelor's degree from an accredited
5 26 college.

5 27 (b) Five years of related professional experience.

5 28 c. The department of natural resources may provide for a
5 29 civil penalty of no more than fifty dollars for failure to
5 30 obtain certification. An interested person may obtain a list
5 31 of certified groundwater professionals from the department of
5 32 natural resources. The department may impose and retain a fee
5 33 for the certification of persons under this subsection
5 34 sufficient to cover the costs of administration.

5 35 d. The certification of groundwater professionals shall
6 1 not impose liability on the board, the department, or the fund
6 2 for any claim or cause of action of any nature, based on the
6 3 action or inaction of a groundwater professional certified
6 4 pursuant to this subsection.

6 5 e. A person who requests certification under this
6 6 subsection shall be required to attend a course of instruction
6 7 and pass a certification examination. An applicant who
6 8 successfully passes the examination shall be certified as a
6 9 groundwater professional.

6 10 f. All groundwater professionals shall be required to
6 11 complete continuing education requirements as adopted by rule
6 12 by the commission.

6 13 g. The commission may provide for exemption from the
6 14 certification requirements of this subsection and rules
6 15 adopted hereunder for a professional engineer licensed
6 16 pursuant to chapter 542B, if the person is qualified in the
6 17 field of geotechnical, hydrological, environmental
6 18 groundwater, or hydrogeological engineering.

6 19 h. Notwithstanding the certification requirements of this
6 20 subsection, a site cleanup report or corrective action design
6 21 report submitted by a certified groundwater professional shall
6 22 be accepted by the department in accordance with subsection 1,
6 23 paragraph "d", subparagraph (2), subparagraph subdivision (e),
6 24 and paragraph "f", subparagraph (5).

6 25 NEW SUBSECTION. 10. Requirements that persons and
6 26 companies performing or providing services for underground
6 27 storage tank installations, installation inspections, testing,
6 28 permanent closure of underground storage tanks by removal or
6 29 filling in place, and other closure activities as defined by
6 30 rules adopted by the commission be certified by the
6 31 department. This provision does not apply to persons
6 32 performing services in their official capacity and as
6 33 authorized by the state fire marshal's office or fire
6 34 departments of political subdivisions of the state. The rules
6 35 adopted by the commission shall include all of the following:

7 1 a. Establishing separate certification criteria applicable
7 2 to underground storage tank installers and installation
7 3 inspectors, underground storage tank testers, and persons

7 4 conducting underground storage tank closure activities as
7 5 required by commission rules.

7 6 b. Establishing minimum qualifications for certification
7 7 including but not limited to considerations based on
7 8 education, character, professional ethics, experience,
7 9 manufacturer or other private agency certification, training
7 10 and apprenticeship, and field demonstration of competence.
7 11 The rules may provide for exemption from education,
7 12 experience, and training requirements for a licensed engineer
7 13 for whom underground storage tank installation is within the
7 14 scope of their license and practice but shall require
7 15 compliance with other certification requirements.

7 16 c. Requiring a written examination developed and
7 17 administered by the department or by some other qualified
7 18 public or private entity identified by the department. The
7 19 department may contract with a public or private entity to
7 20 administer the department's examination or a department
7 21 approved third party examination. The examination shall, at a
7 22 minimum, be sufficient to establish knowledge of all
7 23 applicable underground storage tank rules adopted under this
7 24 section, private industry standards, federal standards, and
7 25 other applicable standards adopted by the Iowa fire marshal's
7 26 office pursuant to chapter 101.

7 27 d. Providing for a minimum two-year renewable
7 28 certification period. A person may apply for a combined
7 29 certificate applicable to underground storage tank installer
7 30 and installer inspector certification, tester certification,
7 31 and closure certification.

7 32 e. Providing that certificate holders obtain and provide
7 33 proof of financial responsibility for environmental liability
7 34 with minimum liability limits of one million dollars per
7 35 occurrence and in the aggregate. The rules may provide
8 1 exemptions where the certificate holder is employed by the
8 2 owner or operator of the underground storage tank system and
8 3 the underground storage tank system is covered by a financial
8 4 responsibility mechanism under subsection 2.

8 5 f. Providing criteria for the department to take
8 6 disciplinary action including issuance of warnings,
8 7 reprimands, suspension and probation, and revocation. Any
8 8 certificate holder subject to suspension or revocation shall
8 9 be entitled to notice and an opportunity for an evidentiary
8 10 hearing as provided in section 17A.18.

8 11 g. Providing for certification reciprocity between states
8 12 upon demonstration that the out of state certification
8 13 criteria is substantially equivalent to rules adopted by the
8 14 commission.

8 15 h. Providing for assessment of fees sufficient to cover
8 16 the costs of administration of the certification program. A
8 17 separate fee may be established for persons applying for a
8 18 combination of installer and installer inspector, testing, or
8 19 closure certifications. Fees received by the department
8 20 pursuant to this subsection are appropriated to the department
8 21 for purposes of the administration of activities under this
8 22 subsection.

8 23 i. Notwithstanding subsection 7, the commission may adopt
8 24 rules requiring that all underground storage tank
8 25 installations, installation inspections, testing, and closure
8 26 activities be conducted by persons certified in accordance
8 27 with this subsection.

8 28 j. Acts or omissions of a person certified under this
8 29 subsection, the state, or the department regarding
8 30 certification, renewal, oversight of the certification
8 31 process, continuing education, discipline, inspection
8 32 standards, or any other actions including department onsite
8 33 supervision of certified activities, rules, or regulations
8 34 arising out of the certification, shall not be cause for a
8 35 claim against the state or the department within the meaning
9 1 of chapter 669 or any other provision of the Code.

9 2 Sec. 7. Section 455G.9, subsection 1, paragraph k, Code
9 3 2007, is amended by striking the paragraph and inserting in
9 4 lieu thereof the following:

9 5 k. Pursuant to an agreement between the board and the
9 6 department of natural resources, assessment and corrective
9 7 action arising out of releases at sites for which a no further
9 8 action certificate has been issued pursuant to section
9 9 455B.474, when the department determines that an unreasonable
9 10 risk to public health and safety may still exist. At a
9 11 minimum, the agreement shall address eligible costs,
9 12 contracting for services, and conditions under which sites may
9 13 be reevaluated.

9 14 Sec. 8. Section 455G.9, subsection 1, Code 2007, is

9 15 amended by adding the following new paragraph:
9 16 NEW PARAGRAPH. 1. Costs for the permanent closure of an
9 17 underground storage tank system that was in place on the date
9 18 an eligible claim was submitted under paragraph "a".
9 19 Reimbursement is limited to costs approved by the board prior
9 20 to the closure activities.

9 21 Sec. 9. Section 455H.105, subsection 5, Code 2007, is
9 22 amended to read as follows:

9 23 5. Adopt rules establishing requirements for the
9 24 submission, performance, and verification of site assessments,
9 25 cleanup plans, and certifications of completion. The rules
9 26 shall provide that all site assessments, cleanup plans, and
9 27 certifications of completion submitted by a participant shall
9 28 be prepared by or under the supervision of an appropriately
9 29 trained professional, including a groundwater professional
9 30 certified pursuant to section ~~455G.18~~ 455B.474.

9 31 Sec. 10. TRANSITIONAL PROVISIONS.

9 32 1. Not later than August 1, 2007, the environmental
9 33 protection commission shall adopt administrative rules
9 34 previously adopted by the Iowa comprehensive petroleum
9 35 underground storage tank fund board pursuant to section
10 1 455G.17 in existence on the effective date of this Act by
10 2 emergency rulemaking pursuant to section 17A.4, subsection 2,
10 3 and section 17A.5, subsection 2, paragraph "b". The rules
10 4 shall become effective immediately upon filing or on a later
10 5 effective date specified in the rules. Any rules adopted in
10 6 accordance with the provisions of this section shall also be
10 7 published as notice of intended action as provided in section
10 8 17A.4.

10 9 2. Following the adoption of emergency rules, the
10 10 commission shall commence rulemaking procedures for the
10 11 administration of section 455B.474, subsection 10.

10 12 3. Any registration or certification issued pursuant to
10 13 section 455G.17 shall continue in full force and effect until
10 14 expiration or renewal.

10 15 Sec. 11. Section 455G.17, Code 2007, is repealed.

10 16 Sec. 12. Section 455G.18, Code 2007, is repealed.

10 17 Sec. 13. CONTINGENT EFFECTIVE DATE. The section of this
10 18 Act repealing section 455G.17, shall take effect upon the Code
10 19 editor's receipt of notice from the environmental protection
10 20 commission stating that emergency rules required under the
10 21 section of this Act relating to transitional provisions have
10 22 taken effect.

10 23 EXPLANATION

10 24 This bill relates to the regulation of underground storage
10 25 tanks by the department of natural resources.

10 26 The bill requires the maintaining of records by owners and
10 27 operators of underground storage tanks for periodic
10 28 underground storage tank facility compliance inspections
10 29 conducted by inspectors certified by the department.

10 30 The bill requires a no further action certificate issued by
10 31 the department for an underground storage tank site which has
10 32 been classified as a no further action site to be filed with
10 33 the county recorder. Currently, a certificate may be filed.

10 34 The bill requires the department to administer a certified
11 35 compliance inspector program for underground storage tank
11 1 facility compliance inspections. The bill provides that the
11 2 program shall include mandatory periodic underground storage
11 3 tank facility compliance inspections by owners and operators
11 4 using inspectors certified by the department. The bill
11 5 requires the department to continue to conduct independent
11 6 inspections as deemed appropriate. The bill appropriates
11 7 moneys received by the department for certification and
11 8 renewal fees for purposes of the administration of the
11 9 certified compliance inspector program. The bill provides
11 10 that acts or omissions of the certified compliance inspectors,
11 11 the state, or the department regarding certification, renewal,
11 12 oversight of the certification process, continuing education,
11 13 discipline, inspection standards, or any other actions, rules,
11 14 or regulations arising out of the certification, inspections,
11 15 or duties imposed by these provisions shall not be cause for a
11 16 claim against the state or the department.

11 17 The bill requires the environmental protection commission
11 18 to adopt rules for requirements as may be necessary to
11 19 maintain state program approval and which are consistent with
11 20 applicable provisions of the federal Energy Policy Act of
11 21 2005, Pub. L. No. 109-58, Title XV, Subtitle B, Underground
11 22 Storage Tank Compliance, as codified in 42 U.S.C. 6991 et seq.
11 23 The bill provides that the commission shall adopt rules
11 24 establishing a training program applicable to owners and
11 25 operators of underground storage tanks. The bill provides

11 26 that the rules may include provisions for department
11 27 certification of operators, self-certification by owners and
11 28 operators, education and training requirements, owner
11 29 requirements to assure operator qualifications, and assessment
11 30 of education, training, and certification fees. The bill
11 31 requires the rules to be consistent with and sufficient to
11 32 comply with certain federal requirements.

11 33 The bill repeals Code section 455G.17 relating to
11 34 certification of different classes of persons as underground
11 35 storage tank installation inspectors. The repeal takes effect
12 1 upon the Code editor's receipt of notice from the
12 2 environmental protection commission stating that emergency
12 3 rules required under this bill have taken effect.

12 4 The bill repeals Code section 455G.18 relating to the
12 5 certification of groundwater professionals and moves
12 6 substantially the same provisions to Code chapter 455B. The
12 7 bill removes a requirement that certification courses and
12 8 examinations be held by the administrator of the Iowa
12 9 comprehensive petroleum underground storage tank fund and
12 10 removes other outdated provisions. The bill makes conforming
12 11 amendments.

12 12 The bill requires that persons and companies performing or
12 13 providing services for underground storage tank installations,
12 14 installation inspections, testing, and permanent closure of
12 15 underground storage tanks by removal or filling in place, and
12 16 other closure activities be certified by the department. The
12 17 bill provides that the rules shall include establishing
12 18 separate certification criteria applicable to underground
12 19 storage tank installers and installation inspectors,
12 20 underground storage tank testers, and persons conducting
12 21 underground storage tank closure activities, establishing
12 22 minimum qualifications for certification, requiring a written
12 23 examination developed and administered by the department or by
12 24 some other qualified public or private entity identified by
12 25 the department, providing for a minimum two-year renewable
12 26 certification period, allowing a person to apply for a
12 27 combined certificate, providing that certificate holders
12 28 obtain and provide proof of financial responsibility for
12 29 environmental liability with minimum liability limits of \$1
12 30 million per occurrence and in the aggregate, providing
12 31 criteria for the department to take disciplinary action
12 32 against certificate holders, and providing for certification
12 33 reciprocity between states, providing for assessment of fees
12 34 sufficient to cover the costs of administration of the
12 35 certification program. The bill that fees received by the
13 1 department are appropriated to the department for purposes of
13 2 the administration of these provisions. The bill allows the
13 3 adoption of rules requiring that all underground storage tank
13 4 installations, installation inspectors, testing, and closure
13 5 activities be conducted by persons certified pursuant to these
13 6 provisions. The bill provides that acts or omissions of
13 7 certified persons, the state, or the department regarding
13 8 certification, renewal, oversight of the certification
13 9 process, continuing education, discipline, inspection
13 10 standards, or any other actions including department onsite
13 11 supervision of certified activities, rules, or regulations
13 12 arising out of the certification, shall not be cause for a
13 13 claim against the state or the department.

13 14 The bill modifies provisions relating to the payment of
13 15 moneys in the remedial account of the Iowa comprehensive
13 16 petroleum underground storage tank fund. Currently, one of
13 17 the uses of such moneys is for corrective action in response
13 18 to a high-risk condition caused by a release from an
13 19 underground storage tank located on a site for which the
13 20 department, after January 31, 1997, has issued a no further
13 21 action certificate. The bill provides that the moneys may be
13 22 used, pursuant to an agreement between the board and the
13 23 department of natural resources, for assessment and corrective
13 24 action arising out of releases at sites for which a no further
13 25 action certificate has been issued when the department
13 26 determines that an unreasonable risk to public health and
13 27 safety may still exist.

13 28 The bill allows moneys in the remedial account of the Iowa
13 29 comprehensive petroleum underground storage tank fund to be
13 30 used for costs for the permanent closure of an underground
13 31 storage tank system that was in place on the date an eligible
13 32 claim was submitted. The bill places limits on the
13 33 reimbursement allowed.

13 34 The bill provides that, not later than August 1, 2007, the
13 35 environmental protection commission shall adopt administrative
14 1 rules previously adopted by the Iowa comprehensive petroleum

14 2 underground storage tank fund board pursuant to Code section
14 3 455G.17 in existence on the effective date of this Act by
14 4 emergency rulemaking. The bill provides that, following the
14 5 adoption of emergency rules, the commission shall commence
14 6 rulemaking procedures for the administration of Code section
14 7 455B.474, subsection 10. The bill provides that any
14 8 registration or certification issued pursuant to Code section
14 9 455G.17 shall continue in full force and effect until
14 10 expiration or renewal.
14 11 LSB 1404HZ 82
14 12 tm:nh/es/88